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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,036	10/11/2001	Paul Wingert	671.003US1	3735
21186	7590	11/16/2004	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			TRUONG, THANH K	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/977,036	WINGERT, PAUL	
	Examiner Thanh K Truong	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 October 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7, 19-24, 27-35 and 37-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 5-7, 33, 40, 44 and 47 is/are allowed.
- 6) Claim(s) 1-4, 19-24, 27-32, 34, 35, 37-39, 41-43, 45, 46 and 48 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

**DETAILED ACTION**

1. This action is in response to applicant's amendment received on October 5, 2004.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 19, 21, 22, 24, 38, 45 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Rasmussen et al. (4,310,036).

Rasmussen discloses an agricultural bagger apparatus comprising: a primary compression mechanism including shaft 52 and teeth 46; an input hopper 50 that receives agricultural feed, the hopper having a sloping wall 70 and lower end exit chute; a tunnel 32 and a means (secondary compression mechanism 82) for displacing pressure within the tunnel from above the primary compression mechanism to a higher portion of the tunnel interior.

The secondary compression mechanism including: the motorized pistons 88; hinged 83 apparatus on one side of the feed tunnel wall and connected to the piston arm 89, and the secondary compression mechanism compacts the feed above the primary compression mechanism by adding pressure to the feed.

Rasmussen further discloses means 62 for: displacing pressure along the sloping wall toward the primary compression mechanism in order for the feed to easily fall through the hopper to the primary compression mechanism (column 3, lines 54-62); for sweeping the feed along the sloping wall in a cervical motion; for agitating the feed at a circumference of the cervical motion at a distance from the sloping wall; and for sweeping the feed along the sloping wall in a first and second separated cervical motion; and the motorized piston are periodically activated for a compression cycle and then withdrawn, leaving space for more feed to deposited by primary compression mechanism (column 5, lines 22-32).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Goar (3,881,407).

As discussed above in paragraph 3 of this office action, Rasmussen discloses the claimed invention, except for the secondary compression mechanism is located on the exterior of the feed tunnel and extending into the feed tunnel.

Goar discloses (figures 6-8) a compression mechanism 50 includes a hinged apparatus that protrudes outward of the feed tunnel wall at the noncompacting stage and extending inward into the feed tunnel at the compacting stage, the compression

mechanism 50 provides a means to push and compacting the material further into the chamber before the material being discharge into a container. Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Rasmussen apparatus by locating the secondary compression mechanism on the exterior of the feed tunnel and extending into the feed tunnel as taught by Goar to eject and compact the material from the chamber into the storage container (column 2, lines 51-53).

6. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen et al. (4,310,036).

As discussed above in paragraph 3 of this office action, Rasmussen discloses the claimed invention, except that the motorized pistons are periodically activated as described in claim 39.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to periodically activated the motorize pistons as cited in claim 39 to achieve the result desired, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

7. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Goth (6,379,086).

As discussed above in paragraph 3 of this office action, Rasmussen discloses the claimed invention, except that the first motor is coupled to the wall of the input hopper.

Goth discloses an apparatus comprising a motor 16 is coupling to a wall of a hopper to keep the material in motion by loosening and preventing the material from adhering to each other inside the hopper (column 1, lines 28-31 and lines 47-48).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Rasmussen first distribution mechanism by applying the teaching from Goth to couple the motor, for driving the distribution mechanism, to the sloping wall of the input hopper for loosening and keeping the material in motion before feeding to the primary compression mechanism.

The modified Rasmussen further discloses: an elongated first bar 13 attached along its length to the first motor, and the first bar forms a non-parallel angle 14 relative to a radius of rotation of the first bar.

The plane of the first bar is substantially parallel to the surface on which it is coupling to, therefore in the modified Rasmussen the plane of the first bar would be parallel to the sloping wall and an axis of rotation the first motor would be perpendicular to the sloping wall, and a first distribution mechanism driven in a cervical motion having both up and down components 13, 14, 15 adjacent to the sloping wall in order to prevent feed bridging before the primary compression mechanism.

8. Claims 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Goth (6,379,086).

As discussed above in paragraph 7 of this office action, the modified Rasmussen discloses the claimed invention, except for a second motor coupled to the sloping wall of the input hopper.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to install a second motor coupled to the sloping wall of the input hopper, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

9. Claims 27-32, 34, 35, 37, 41 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Bahlmann (DE 3619251).

As discussed above in paragraph 3 of this office action, Rasmussen discloses the claimed invention, but does not expressly disclose that the second compression mechanism moving feed within the tunnel cavity during operation of the primary compression mechanism.

Bahlmann disclose an apparatus comprising means 5 for moving feed 6 within the tunnel from above the primary compression mechanism to a higher portion of the tunnel interior cavity during operation of the primary compression mechanism (figure 1). Means 5 provides a pressing mechanism to move and to compress the feed in the tunnel cavity. Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Rasmussen second compression mechanism by incorporating the means 5 as taught by Bahlmann for moving and compressing the feed in the tunnel.

10. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Bahlmann (DE 3619251).

As discussed above in paragraph 9 of this office action, the modified Rasmussen discloses the claimed invention, except that the motorized pistons are periodically activated as described in claim 42.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to periodically activated the motorize pistons as cited in claim 42 to achieve the result desired, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

***Allowable Subject Matter***

11. Claims 5-7, 33, 40, 44 and 47 are allowed.

***Response to Arguments***

12. Applicant's arguments filed October 5, 2004 have been fully considered but they are not persuasive.

In response to the Applicant's argument that the secondary compression mechanism in Rasmussen is not function as recited in claim 19: "a secondary compression mechanism ... substantially only toward an upper portion of the tunnel cavity during operation of the primary compression mechanism.", the examiner contends that the recitation in claim 19 about the secondary compression mechanism contain functional language that had no patentable weight. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

In response to the Applicant's challenge of the use of Official Notice on page 4, paragraph 8 of the previous office action (mailed February 18, 2004), the examiner did not use Official Notice to reject claims 20 and 23. Please review the previous Office Action (mailed February 18, 2004).

In response to Applicant's argument that there is no suggestion to combine the references (Claims 27-32, 34, 35, 37, 41 and 48 – rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Bahlmann (DE 3619251), the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 601 (CCPA 1915). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures take as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 110 USPQ 209 (CCVA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA. 1969).

In this case, Bahlmann was relied upon for the teaching of compression of feed in the tunnel cavity during operation of the primary compression mechanism.

### ***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is (703) 605-0423. The examiner can normally be reached on Mon-Thurs from 8:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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